

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1083

B P/S

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT



-----X
LENIN ENCISO-CARDOZO, Edwin Michael
Enciso, Minor

Petitioners

74-1083

v.

IMMIGRATION AND NATURALIZATION SERVICE

Respondent
-----X

APPENDIX TO PETITIONERS' BRIEF IN SUPPORT
OF THE PETITION FOR REVIEW

Of Counsel:

WASZMAN, ORLOW, KAYE & RUBIN

MARION R. GINSBERG
JAMES J. ORLOW
Attorneys for Petitioners
233 Broadway
New York, NY 10007
Tel : 964-7800

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APPENDIX

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File No. A19542321

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

ENCISO-CARDOSO,
LENIN

Respondent.

In Deportation Proceedings Under Section 242
of the Immigration and Nationality Act

DECISION OF THE
SPECIAL INQUIRY OFFICER

The above-named respondent having appeared before me for hearing on this date, pursuant to the Order to Show Cause in this proceeding, and having admitted that the factual allegations contained therein are true, and having further admitted that (s) he is deportable from the United States on the charges set forth therein, I am satisfied and have concluded that deportability has been thereby established.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the Government on or before MAY 26, 1973, or
(Date)
any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: the respondent shall be deported from the United States to MEXICO on the charge(s) contained in the Order to Show Cause.

~~IT IS FURTHER ORDERED THAT RESPONDENT'S CHILD'S MOTION TO INTERVIEW~~
~~IS DENIED~~

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the respondent into its territory, the respondent shall be deported to _____.

Date: Feb 26, 1973

Howard I. Cohen
(Special Inquiry Officer)

Place: N.Y. N.Y.

Copy of this decision has been served on the respondent.

Appeal: Waived reserved

Howard I. Cohen
(Special Inquiry Officer)

Decision
of BIA



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

File: A19-542-321 - New York

SEP 28 1973

In re: **LENN ENCISO-CARDOSO** (the father of the
appellant) of the order to show cause and his
in deportation proceedings. The immigration judge found
him deportable and granted him the privilege of voluntary
appeal.

On review of the record and the appellant's
representations, the Board has concluded by a majority
of 3 to 2 that the appellant is not deportable and
that he is entitled to the privilege of voluntary
appeal.

ON BEHALF OF RESPONDENT: James J. Orlow, Esquire
1315 Walnut Street
Philadelphia, Pa. 19107

ON BEHALF OF IAN SERVICE: Paul C. Vincent, Esquire
Appellate Trial Attorney and
that the deportation of the appellant is not in the
public interest.

ORAL ARGUMENT: June 13, 1973 by respondent's counsel.
CHARGES: Violation of the Immigration and Naturalization
Act, Section 241(a)(2), IAN Act (8 U.S.C. 1251(a)(2)).

Order: Section 241(a)(2), IAN Act (8 U.S.C. 1251(a)(2)).
Nonimmigrant visitor for pleasure - remained longer than permitted.
The appellant is a visitor for pleasure and his stay in the United States is in violation of the law.

AFFIDAVIT: Extended voluntary departure. The appellant's
voluntary departure is not in the public interest and he is
entitled to the privilege of voluntary appeal. This is an appeal from an order of an immigration judge
finding the respondent deportable and granting him
voluntary departure. The immigration judge also denied the motion of the respondent's minor son, a
United States citizen, to intervene in the proceedings
brought against his parents. The appeal will be dismissed.
The appellant's constitutional rights are not violated.

The respondent is a native and citizen of Mexico who entered the United States on November 2, 1970 as a non-immigrant visitor for pleasure and authorized to remain until November 2, 1971. He remained beyond the time authorized. At a hearing before an immigration judge on February 26, 1973, he admitted the truth of the factual allegations of the Order to Show Cause but did not concede deportability. The immigration judge found him deportable and granted him the privilege of voluntary departure. A review of the record satisfies us that deportability has been established by evidence that is clear, convincing and unequivocal.

On appeal counsel contends (1) that the infant citizen child's constitutional rights were violated by the refusal of the immigration judge to allow his intervention in the deportation proceedings against his mother; and (2) that the imposition of the condition that the alien would be willing to voluntarily depart "promptly" is an illegal restriction on the exercise of discretion by the immigration judge.

We reject counsel's contention that the immigration judge's denial of the motion of the respondent's United States citizen child to intervene in these proceedings is violative of the 5th, 9th and 10th Amendments to the Constitution of the United States for the following reasons: First, contrary to assertions in the respondent's brief on appeal, the respondent's deportation does not deprive his minor citizen child of any rights under the Constitution. See *Application of Aguilar*, 307 F. Supp. 1213 (S.D.N.Y. 1969); *Ford v. INS*, 430 F. Supp. 1179 (S.D.N.Y. 1966); *Aguilar v. Marshall*, 323 F. Supp. 1300 (E.D. Texas 1971), aff'd 461 F.2d 710 (5 Cir. 1972); *Payne v. Shuler*, 303 F. Supp. 16 (S.D. Texas 1969), aff'd 424 F.2d 1151 (5 Cir. 1970). We believe that the cases cited above are dispositive of counsel's argument concerning the alleged constitutional rights of his United States citizen child.

We find no merit to counsel's other contention that the immigration judge was denied the "unfettered" discretion required under section 244(e) of the Act because the granting of the privilege was conditioned on the willingness of the alien to depart "promptly" as provided for in 8 C.F.R. 244.1. Congress has authorized the Attorney General to exercise his discretion in granting the privilege of voluntary departure. This means that the ultimate grant of relief will depend on the facts of each case. However, in reaching his decision, the Attorney General may take into account the best interests of the United States and the administrative needs and experience in enforcing the immigration laws. 1/ The Attorney General has determined that the requirement that the alien is willing and able to depart promptly is a reasonable and proper condition to meet the needs of effective law enforcement.

One additional comment is appropriate. Counsel argues that the immigration judge erred in refusing to grant the respondent indefinite or long-term voluntary departure. The immigration judge has no authority to grant indefinite voluntary departure, Matter of Chamiso, 13 I&N Dec. 435 (BIA 1969). Moreover, if the respondent feels he needs more time, he may apply to the District Director for an extension under 8 C.F.R. 244.2. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 90 days from the date

1/ U.S. ex rel. Cisneros v. Nativ, 202 F.2d 289 (7 Cir. 1953); Matter of D-F-, 4 I&N Dec. 589 (A.G. 1952).

UNITED STATES DEPARTMENT OF JUSTICE
A19 542 321

September 23, 1953

of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Mr. J. Orlov, Esquire,
15 Walnut Street,
Philadelphia, Pa. 19107

Acting Chairman

Reference is made to your interest in the above

For your information, there is enclosed herewith

copy of the decision and order of the Board of Immigration

Sincerely yours,

Chairman

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

Barbara B. Blum, being duly sworn, deposes and says:

I am Assistant Administrator in the New York City Human Resources Administration. I have primary responsibility (in a program known as Special Services for Children) for providing services and care for more than 28,000 New York City children who are not in their own homes. This affidavit sets forth my opinions with regard to the emotional and physical needs of a child, particularly an infant, and the social and financial effects of separation from the parent(s), drawing upon my experience as Assistant Administrator as well as my earlier experience as Deputy Commissioner in the New York City Department of Mental Health and Mental Retardation.

1. There is an expanding body of knowledge which indicates that (a) the child's best interests are served when he is kept with his own family, (b) the trauma of separation from parents is both damaging and lasting, and (c) both the male and female parental figures are important if maximum development of the individual is to be stimulated. In my opinion, the emotional health of the infant is best served by the infant's remaining with his two natural parents unless they are unable to provide proper care for the infant.

AFFIDAVIT

STATE OF NEW YORK)

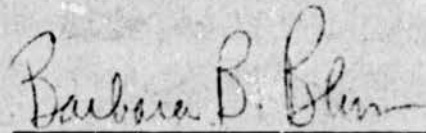
SS:

COUNTY OF NEW YORK)

4. Moreover, I am advised by my legal department that in that case there would exist serious legal constraints to freeing that child for adoption to become member of a permanent family.

5. Even if the parents left voluntarily in order to escape the sanction of deportation and an action to free the child for adoption could occur, based on current rates the chances would be less than one in eight that the child would actually be adopted.

Based on all the foregoing, it is my opinion that such a deportation separating a child from his natural parents is clearly contrary to the best interests of the child.


Barbara B. Blum

SWORN TO BEFORE ME THIS

26th DAY OF FEBRUARY, 1973.

Tel: 212-33-3112
16th floor

R E S U M E

Barbara B. Blum (Mrs.)
1150 Fifth Avenue
New York, New York

Born: January 18, 1930 Beaver, Pa.

Father: Virgil E. Bennett

Mother: Ethel F. Bennett

Education: Beaver Public Schools through elementary grades

Attended Winchester-Thurston School for girls in
Pittsburgh, Pa., graduating in 1947

Attended Vassar College, Poughkeepsie, N.Y.
graduated in 1951

Major field - Mathematics

Married Robert M. Blum on June 21, 1951

Children: Stephan, born March 23, 1951
Jonathan, born February 2, 1954
Thomas, born February 14, 1964
Jennifer, Born April 12, 1966

Nov. 1971- Assistant Administrator/Commissioner, Special Services
Present for Children

With responsibility for the planning, program development and operation of services for families and children so at risk that continuation of family life is in jeopardy. SSC services include diagnostic, preventive, protective, adoption and foster care programs. Each year, more than 25,000 children and their families are provided assistance.

Supervise more than 3100 employees in four borough offices, six institutions, seven group homes and the central office. The budget for these operations is \$81 million. In addition, the expenditure of \$154 million for the payment of voluntary child caring agencies is under the supervision of the Assistant Administrator.

Presently major emphasis is on the development of improved administrative accountability, alternatives to institutional services, and new programs for children with special needs. Uniform cost accounting has been instituted in all child caring agencies effective 7/1/72; new contracts have been drafted and negotiations with the 80 child care agencies are underway.

One detention center has been closed; plans are set for closing one shelter and an additional detention center. Forty foster care places and 16 group homes places have been created for children who would otherwise be in secure detention. A large number of community-based and specialized services are in various stages of development.

1970-71

Director, Interagency Council on Child Welfare

In this capacity, served as staff to a council comprised of fifty representatives from agencies concerned with the care of children. During this time,

- 1) stimulated the development of a central registry for child abuse
- 2) assisted in the development of a proposed information system
- 3) planned with four voluntary child care agencies for the creation of one hundred new places for adolescent children with special placement needs
- 4) developed specifications for new contracts which have been drafted for the purchase of service from voluntary agencies
- 5) prepared a grant application for LEA funds to strengthen analytic capabilities in the child abuse unit (the grant was approved in the amount of \$80,000)

In addition, had responsibility for planning the Andover Conference at which recommendations for changes in the delivery of child care services in New York City were formulated.

1967-71

Deputy Commissioner, DMH & MRS

As Deputy Commissioner, had responsibility for all aspects of budget preparation and supervision including-

- 1) program planning budget system for mental health and mental retardation in the City of New York
- 2) analysis of available funding sources at all levels, including State, Federal and private funding sources
- 3) actual preparation, working in conjunction with BOB, of the budgets, both capital and expense
- 4) presentation of the budget to the Board of Estimate and City Council
- 5) monitoring progress toward program goals.

Under the direction of the Commissioner, had principal responsibility for review and redefinition of program priorities for mental health and mental retardation services. In the performance of this function with assistance of staff, analyzed the availability of resources in each borough and neighborhood as well as the incidence of need for the provision of such services in the community. During this period, visited, examined the facilities of and worked closely with the more than 100 voluntary agencies funded through DMN & MRS. Further, because the majority of services funded by the agency are municipally provided, worked closely with and acquired operating familiarity with the Department of Correction, Hospitals, Education, and Social Services.

New service modes and systems developed during this time included -

- 1) neighborhood-based mental health services in East New York, Bedford-Stuyvesant, Bushwick, Brownsville, South Bronx, Washington Heights
- 2) the initiation of a manpower training project for 140 paraprofessionals with a grant of more than \$700,000 from NIMH
- 3) quadrupling the services provided for the mentally retarded.

Under general supervision of the Commissioner, had responsibility for liaison with the State Department of Mental Hygiene; proposed legislation for shared funding which would in effect develop a unified service delivery system.

Administered more than one hundred contracts with the voluntary agencies in addition to the affiliation contracts for municipal hospitals.

Had responsibility for all personnel matters within the department.

1966-67

Chairman of Mayor's Committee on Mental Retardation

Chaired and staffed a committee of more than sixty members which developed recommendations now implemented to improve services to the retarded. Among the major recommendations was the development of regional mental retardation councils to coordinate and plan neighborhood programs. In addition, programs for the retarded have been developed in the department of Parks and the Department of Personnel. Also, the efforts of the committee are partially responsible for increasing funding by DMH & MRS from less than one million dollars to more than nine million dollars in four years, with a proportional increase in services provided.

1960-66

Founder and member of the Board of the Association for Mentally Ill Children.

This membership corporation was developed by a small group of parents of children who were seriously disturbed. Served during the first three years as coordinator and unpaid director. The corporation in 1961 opened a day treatment center for three children. Within three years fifteen children were being treated and there are now more than forty children including adolescents enrolled. The school is funded by Board of Education, DMH & MRS, and voluntary contributions and utilizes space at the First Presbyterian Church and the Boys Club.

1965-67

Member, N.Y.C. Community Mental Health Board

Other activities:

Formerly, member of the East Harlem Community Planning Board.

Formerly, member of the Board of the Lenox Hill Neighborhood Association where I was particularly involved in programs for young children and the aging.

Formerly, member of the Advisory Boards of the Young Adult Institute, Association for Help of Retarded Children, and Association for Children with Retarded Mental Development.

Formerly, member of the Advisory Board for the Lexington School for the Deaf.

ORLOW, KAYE & GINSBERG
ATTORNEYS AT LAW

JAMES J. ORLOW
(ADMITTED IN PA. & D.C. ONLY)
ALLEN E. KAYE
MARION R. GINSBERG

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233 BROADWAY
NEW YORK, N.Y. 10007
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August 1, 1974

Clerk,
United States Court of Appeals
Second Circuit
Room 1702
United States Courthouse
Foley Square
New York, NY 10007

Re: Lenin Enciso-Cardozo v. Immigration and
Naturalization Service
Docket No. 74-1083

Dear Sir:

Herewith we submit the appendix to petitioners' brief
in support of the petition for review in the above captioned case.

Please be advised that we have conferred with Mary McGuire,
Esq., Attorney for the Respondent as to the contents of the Appendix and
that no objection thereto has been made. A copy of the Appendix has been
served upon Mary McGuire, Esq.

Yours very truly,

WASSERMAN, ORLOW, KAYE & RUBIN

BY: Marion R. Ginsberg
Marion R. Ginsberg

MRG:hb

Copy of appendix received 8/1/74

Mary P. McGuire
Mary P. McGuire
Special Assistant U.S. Attorney